

AUG 04 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONTAY D. HAYES,

Plaintiff - Appellant,

v.

SILVIA GARCIA, Warden,

Defendant - Appellee.

No. 06-56737

D.C. No. CV-04-02112-NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLECTCHER, THOMAS and WARDLAW, Circuit Judges.

California state prisoner Dontay D. Hayes appeals pro se from the district court's summary judgment in favor of a prison official in his 42 U.S.C. § 1983

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

action alleging he was denied outdoor exercise in violation of the Eighth Amendment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Beene v. Terhune*, 380 F.3d 1149, 1150 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Hayes' Eighth Amendment claim because Hayes failed to raise a genuine issue of material fact as to whether the limitations on outdoor exercise were the product of deliberate indifference. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (requiring a successful Eighth Amendment claim based on inhumane conditions of confinement to include a showing that prison officials knew of a substantial risk of serious harm and failed to take reasonable measures to avoid the harm).

The district court did not abuse its discretion in denying Hayes' motion to compel discovery where defendant's objections were proper and defendant produced the documents Hayes requested. *See Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (affirming denial of motion to compel discovery where plaintiff failed to follow rules of civil procedure).

Hayes' remaining contentions are unpersuasive.

AFFIRMED.